INDEX

CITATIONS

Cases—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 94

UNITED STATES OF AMERICA, PETITIONER

v.

HAROLD T. LINDSAY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The memorandum opinion of the United States District Court for the District of Massachusetts (R. 29–30) is reported at 105 F. Supp. 467. The opinion of the United States Court of Appeals for the First Circuit (R. 33–36) is reported at 202 F. 2d 239.

JURISDICTION

The judgment of the Court of Appeals was entered on February 26, 1953 (R. 36). The petition for a writ of certiorari was filed on May 26, 1953, and granted on October 12, 1953 (R. 39).

The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the six-year limitation period contained in Section 4 (c) of the Commodity Credit Corporation Charter Act of 1948 (as amended), for the bringing of suits "by or against the Corporation," is computed, for claims of the Corporation against private individuals which arose prior to the enactment of Section 4 (c), from the arising of the cause of action or from the statute's effective date.

STATUTE INVOLVED

Section 4 (c) of the Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070–1071, as amended by Section 5 of the Act of June 7, 1949, 63 Stat. 154, 156 (15 U. S. C. (Supp. III) 714b (c)), provides in pertinent part:

> * * * No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought. * * *[1]

STATEMENT

This action was instituted by the United States on February 29, 1952, to enforce a claim of the

[1] As originally enacted, Section 4 (c) provided a four-year period of limitations. Section 5 of the 1949 Act amended the 1948 Charter Act by enlarging the period of limitations from four to six years.

Commodity Credit Corporation, a wholly owned corporation of the United States chartered by Congress in the Commodity Credit Corporation Charter Act of June 29, 1948 (62 Stat. 1070, 15 U. S. C. Supp. II, 714 *et seq.* (the 1948 Charter Act)) and the successor in interest to the Corporation of the same name previously chartered under Delaware law. The purpose of the suit was to recover from Harold T. Lindsay, a wool handler, his sureties, and Draper and Company, Inc., a warehouseman, for damage to wool owned by the Corporation and stored by Lindsay while in his possession in the warehouse of Draper and Company (R. 1–4). This damage occurred not later than February 26, 1945 (R. 4).

According to the allegations of the complaint, Lindsay entered into a Wool Handler's Agreement with the Corporation to purchase, handle, store, and sell domestic wool for the account of the Corporation under the 1944 Wool Purchase Program "to assist in supporting the market for domestic wool, and in assuring the immediate availability of wool for wartime requirements" (R. 2, 6).[2] Under the agreement, Lindsay agreed

[2] During World War II, the President by Executive Order No. 9280, dated December 5, 1942 (7 Fed. Reg. 10179), authorized and directed the Secretary of Agriculture to assume full responsibility for and control over the nation's food program. "Food" was defined to include wool. The powers thus delegated to the Secretary of Agriculture (subsequently redelegated to the War Food Administrator by Executive Order 9322 (8 Fed. Reg. 3807), as amended by Executive

to act as agent to purchase, handle, store, and sell domestic shorn wool for and on behalf of Commodity Credit Corporation. The Corporation agreed to reimburse Lindsay for the amounts paid for the wool and expenses authorized under the Agreement in handling and storing the wool, and to pay a fee for his services as handler. To secure the proper performance of this agreement, Lindsay furnished to the Corporation a performance bond in the amount of $200,000 on which Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America were sureties (R. 6-23, 24-26). The terms of the agreement required Lindsay "to provide proper storage" for the wool and to "take such action as may be necessary to keep such wool in good condition" (R. 15). On February 26, 1945, Lindsay returned to the Corporation a quan-

---

Order 9334 (8 Fed. Reg. 5423)) included the assignment of priorities and the allocation of food, its efficient and proper distribution, and the purchase and distribution for other Federal agencies.

Pursuant to the powers vested in it by Executive Order No. 9280, the Department of Agriculture issued Food Distribution Order 50 (8 Fed. Reg. 5131), whereby all sales and deliveries of domestic wool were restricted to Commodity Credit Corporation or to those entering into Wool Handler's Agreements with the Corporation. The purpose of F. D. O. 50 was "to assure an adequate supply and efficient distribution of wool to meet war and essential civilian needs" (8 Fed. Reg. 5131).

The Wool Handler's Agreement, here alleged to have been breached, was entered pursuant to this Order.

tity of wool which he had acquired and stored with Draper and Company (R. 4). The wool when so acquired and stored had been in good and undamaged condition, but when it was returned to the Corporation it was wet and damaged due to the failure of Lindsay to perform his obligations under the agreement to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition (R. 4). By this suit, the United States sought to recover from the respondents damages in the amount of $1,127.03 with interest and costs (R. 3, 4).

The respondents moved to dismiss the complaint on the ground, among others, that the action was barred by the six-year statute of limitations imposed by Section 4 (c) of the 1948 Charter Act, as amended, *supra*, p. 2 (R. 26–28). The district court dismissed the complaint, rejecting the Government's contention that the time for bringing suit on claims which had accrued prior to the enactment of the limitation provision began to run from the date of that enactment (June 29, 1948) (R. 28–29).

The Court of Appeals for the First Circuit affirmed (R. 33–36). It held that the "literal meaning" of Section 4 (c), *i. e.*, "'accrued' as that word is ordinarily used," clearly was retroactive to the date when the cause of action came into existence (R. 34). While the court went on to recognize that this Court had in several cases

construed similarly worded statutes of limitations "to have prospective effect only, that is, to affect existing causes of action only from time of the passage of the statute limiting time for suit", the court regarded these cases as inapplicable (R. 35). The statutes in these cases were construed as prospective, according to the court, "only for the purpose of preventing the statutes from summarily cutting off existing rights, and for this reason being unconstitutional", but curtailing the Government's right to sue by a retroactive construction in the instant case would not raise any constitutional problems (R. 35–36).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the limitation period in Section 4 (c) of the Charter Act of 1948, as amended, is computed, for claims of the Commodity Credit Corporation against private individuals which arose prior to the enactment of Section 4 (c), from the date when the cause of action arose.

2. In failing to hold that the limitation period in Section 4 (c) is computed, for such claims by the Corporation, from the effective date of the Charter Act of 1948, *i. e.* June 29, 1948.

3. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

The cause of action underlying the Government's complaint in this case came into existence

on or about February 26, 1945, when the damaged wool was returned by respondent Lindsay to the Commodity Credit Corporation, then a Delaware corporation. At that time, there was no federal time limitation for instituting suit on the claim. By Section 16 of the 1946 Charter Act, this and other claims of the Delaware corporation were transferred to the newly chartered federal corporation of the same name and, by Section 4 (c) of the Charter Act, as amended, a six-year time limitation "after the right accrued" was imposed for the bringing of suits "by or against" the federal corporation.

The present complaint was filed on February 29, 1952, within six years of the effective date of the 1948 Act. The court below, however, relying upon what it regarded as the "literal meaning" of Section 4 (c), construed the statute retroactively and computed the six-year period from the date the cause of action first came into existence and thus held it to be time barred, in square conflict with the decision of the Sixth Circuit in *Field Packing Co.* v. *United States*, 197 F. 2d 329.

The language of Section 4 (c) is for all practical purposes the same as that in analogous limitation statutes which, as applied to causes of action existing prior to the enactment of the time limitation, have repeatedly been construed by this Court as prospective in operation. *Lewis* v. *Lewis*, 7 How. 776; *Sohn* v. *Waterson* 17 Wall.

596; *United States* v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1.

Contrary to the apparent understanding of the court below, the prospective effect accorded such statutes, and which must be given Section 4 (c), is not based solely upon the avoidance of constitutional questions; rather, it is but a particular application of the established rule, founded upon fairness and equity, that newly enacted statutes are to be read as prospective only, in the absence of clear language requiring retroactivity. In addition, there is nothing in the language of Section 4 (c) requiring that it operate retroactively and by so doing perhaps cut off summarily, or unreasonably curtail, the remedy of the federal corporation on claims transferred to it from the Delaware corporation.

The legislative history of the 1948 Act also reveals that Congress in enacting Section 4 (c) was at all times concerned with providing an acceptable time limitation which would be fair to both the Corporation and private claimants—a purpose which can be fulfilled only by giving Section 4 (c) a prospective interpretation. As to claims of the Federal Corporation, Senator Aiken, who had a leading role in the passage of the 1948 Act and who was the senior Senate member of the Conference Committee which for the first time made the proposed time limitation applicable to the Corporation, specifically stated, in his analysis of the 1948 Act, that time limitations

contained in Section 4 (c) "will not begin to run on claims of the Delaware Corporation transferred to the Federal Corporation until June 30, 1948, the effective date of the new charter." 94 Cong. Rec. A-4408, 4409.

ARGUMENT

The cause of action of the Commodity Credit Corporation against respondents, which arose prior to the enactment of the six-year limitations provision in Section 4 (c) of the Charter Act of 1948, is not time barred since brought within six years of the Act's effective date

Introductory

The cause of action on which the Government's complaint was based in the present case came into existence on or about February 26, 1945, when Lindsay returned the wool in a damaged condition to Commodity Credit Corporation, then a Delaware corporation.[1] At that time, there was no federal statute prescribing a time within which the Government must bring suit on such a claim.

By the Commodity Credit Corporation Charter Act of June 29, 1948, Congress supplanted the Delaware corporation with a federally chartered corporation, as required by the Government Cor-

[1] The Delaware corporation had been created as an agency of the United States on October 16, 1933, pursuant to Executive Order No. 6340, and its charter had been obtained under the laws of the State of Delaware. By Section 7 of the Act of January 31, 1935 (49 Stat. 4), Congress continued the Corporation as an agency of the United States. The capital stock of the Corporation was eventually transferred to the United States (Act of March 8, 1938, 52 Stat. 107; 15 U. S. C. 713a-1 and 713a-2).

poration Control Act (59 Stat. 597).[4] Section 16 of the 1948 Charter Act transferred to the new federally chartered Commodity Credit Corporation the "rights, privileges, and powers, and the duties and liabilities of the Commodity Credit Corporation, a Delaware corporation", and also provided that enforceable claims of or against the Delaware Corporation, which under Section 17 (15 U. S. C. (Supp. V) 714o) was to be dissolved, "shall become the claims of or against, and may be enforced by or against" its federally incorporated successor. Section 4 (c) of the Charter Act imposed the first federal statute of limitation on filing suit on claims "by or against the Corporation" and, as amended,[5] authorized such a suit "within six years after the right accrued on which suit is brought. * * *." *Supra*, p. 2.

The court below has held that although the

---

[4] Section 304 (a) of the Control Act required that in the future Government corporations must be chartered directly by Congress or under specific congressional authorization and Section 304 (b) required that any existing corporation chartered under State law must be dissolved by June 30, 1948, but that it might be reincorporated by Act of Congress.

[5] As noted, *supra*, p. 2, fn. 1, the limitation provision in Section 4 (c), as enacted in 1948, allowed four years for the filing of actions. The period of limitations was extended to six years by the 1949 amendments to the Charter Act (63 Stat. 154, 159, c. 175, Sec. 5), upon the recommendation of the Chief Judge of the Court of Claims that the limitations provision be made uniform with that applicable to suits against the United States in the Court of Claims. H. Rep. No. 418, 81st Cong., 1st Sess., p. 9.

United States[6] filed the instant complaint in February, 1952, about 3½ years after the enactment of Section 4 (c), the suit was nevertheless barred since it was brought more than six years after the cause of action came into existence in 1945, even though at that time there was no federal limitation upon the Corporation's instituting suit on its claims.[7] The court based this ruling on the ground that the "literal meaning" of Section 4 (c), *i. e.*, "'accrued' as that word is ordinarily used"

[6] Although the claim here involved is that of the Commodity Credit Corporation, Section 4 (c) provided for the bringing of such suits in the name of the United States as the real party in interest. Moreover, even in the absence of such a provision, it would be proper to name the United States as plaintiff in such a suit since the United States has the right, apart from any statute, to sue in its own name for the protection of its interest on any claim of Commodity Credit Corporation. *United States* v. *Allied Oil Corp.*, 341 U. S. 1; *Cherry Cotton Mills* v. *United States*, 327 U. S. 536, 538–540; *New Brunswick* v. *United States*, 276 U. S. 547, 559–564; *Erickson* v. *United States*, 309 U. S. 246, 248; *Clallam County* v. *United States*, 263 U. S. 341, 344–345; *Insurance Co. of North America* v. *United States*, 189 F. 2d 699, 702 (C. A. 4); *Russell Wheel & Foundry Co.* v. *United States*, 81 F. 2d 526, 527 (C. A. 6). Even when a wholly-owned Government corporation is a party to a suit, the United States is recognized as the real party in interest when Government funds are involved. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 524; *Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415, 424; *Southern Pacific Co.* v. *Reconstruction Finance Corp.*, 161 F. 2d 58, 59 (C. A. 9).

[7] It is well established that statutes of limitation do not run against the Government unless it is expressly included. *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132–133; *United States* v. *Summerlin*, 310 U. S. 414, 416. See R. 30, 34.

(R. 34), clearly was retroactive to the date when the cause of action came into existence, notwithstanding the fact that this date was prior to the enactment of Section 4 (c).

This conclusion is inconsistent with the repeated holdings of this Court that, as applied to claims antedating the enactment of a newly imposed statute of limitations, the word "accrued" in such a limitations provision is to be read as prospective only, in accordance with the general principle that new statutes are not to be applied retroactively unless required by explicit language. *Infra*, pp. 12–26. In addition, the court's conclusion failed to give weight to the Act's legislative history which reveals a Congressional intent that Section 4 (c) should operate prospectively from the effective date of the Act, and, hence, not bar the instant suit. *Infra*, pp. 26–35.

A. Properly construed, Section 4 (c) on its face is prospective only

1. The court below purported to base its decision on "giving the statutory language its literal meaning" (R. 34). But the statutory language relied on consists solely of the word "accrued," a word which is found in most statutes of limitation and which is used, more frequently than not, without any connotation of retroactivity. And while "accrued," as applied to after-arising claims, undoubtedly is equated with the time the causes come into existence, it does not have the retroactive connotation attributed to it by the

court below as far as pre-existing causes are concerned, for, if it did, most statutes of limitations would have a retroactive effect.

In fact, the contrary is true. *Field Packing Co. v. United States*, 197 F. 2d 329 (C. A. 6), like the instant case, involved the application of Section 4 (c) of the 1948 Charter Act to a claim of the Government arising prior to the enactment of the statute. The appellants there urged, as the court below held, that as to such claims the time for bringing suit ran from the date when the claim came into existence, although at that time there was no federal limitation provision applicable to the Government. The Court of Appeals for the Sixth Circuit, in a *per curiam* opinion, expressly rejected this contention as "not well grounded" (197 F. 2d at 330), and ruled instead that Section 4 (c) "was intended to operate prospectively and not retroactively, it being established that no statute of limitation shall be given retroactive effect unless such construction is required by explicit language or by necessary implication."

The holding of the Sixth Circuit, rather than that of the court below, is correct. This Court has repeatedly held that the term "accrued", in newly imposed statutes of limitations is not to be read as synonymous with the coming into existence of the claims, in situations where the claim arose prior to the statute's enactment, and has further held that as to such claims the limitation

provision, if applicable at all, begins to run from the statute's effective date. *Lewis* v. *Lewis*, 7 How. 776, 778; *Ross* v. *Duval*, 13 Pet. 44, 62; *Sohn* v. *Waterson*, 17 Wall. 596; *Un. Pac. R. R.* v. *Laramie Stock Yards*, 231 U. S. 190; *United States* v. *Morgan*, 245 U. S. 392, 395; *Fullerton Company* v. *Northern Pacific*, 266 U. S. 435; *United States* v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1; see also *American Mutual Liability Ins. Co. of Boston* v. *Lowe*, 88 F. 2d 625, 627 (C. A. 3); *National Labor Relations Board* v. *Ithaca Cotton Mfg. Co.*, 179 F. 2d 504, 507 (C. A. 5); *Jonnua Cotton Mills Co.* v. *National Labor Relations Board*, 176 F. 2d 749, 754 (C. A. 4); *The Fred Smartley, Jr.*, 105 F. 2d 606 (C. A. 4), certiorari denied sub nom. *S. C. Loveland, Inc.* v. *Pennsylvania Sugar Co.*, 309 U. S. 683; *Carscadden* v. *Territory of Alaska*, 105 F. 2d 377 (C. A. 9).

In the early case of *Lewis* v. *Lewis*, 7 How. 776, the question involved the application to a pre-existing cause of action of a newly imposed statute of limitations which provided (7 How. at 776):

> That every action * * * shall be commenced within sixteen years after the cause of such action shall have accrued, and not after; * * *. [Italics supplied.]

This limitation provision initially was inapplicable to suits by persons beyond the limits of the State. Subsequently, the limitation was made

applicable to non-residents as well as to residents, and thereafter a non-resident brought suit on a cause of action which accrued prior to the statute's enactment. Using language fully apposite here, this Court held, in an opinion by Chief Justice Taney, that the time provided by the limitation provision was to be computed from the date the cause of action was first subjected to the operation of the statute (7 How. at 779):

> Upon principle, it would seem to be clear, that it [the time limitation] must commence when the cause of action is first subjected to the operation of the statute, unless the legislature has otherwise provided. For it is at that time that the statute first acts upon it, and limits the period within which suit must be brought.

This principle was followed in *Sohn* v. *Waterson*, 17 Wall. 596. There again, the statute provided (17 Wall. at 597):

> That all actions * * * shall be commenced within two years next after the cause or right of such action shall have *accrued*, and not after. [Italics supplied.]

Suit was thereafter brought on a claim arising more than 4 years prior to the statute's enactment. Approving the Circuit Court's conclusion that the two year limitation provided by the statute was to be computed from the date of the statute's enactment, and not from the date when the cause of action came into existence, the

Court reviewed the various possible applications of such a newly imposed limitation provision to pre-existing causes of action and expressly disapproved the construction under which time running prior to the statute's enactment would be included in the period provided for bringing suit (17 Wall. at 598):

> "When a statute declares generally that no action, or no action of a certain class shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would make it apply to past actions as well as those arising in the future. But if an action accrued more than the limited time before the statute was passed a literal interpretation of the statute would have the effect of absolutely barring such action at once. It will be presumed that such was not the intent of the legislature. Such an intent would be unconstitutional. To avoid such a result, and to give the statute a construction which will enable it to stand, courts have given it a prospective operation."

---

[1] The Court continued (pp. 598–600):

"* * * In doing this, three different modes have been adopted by different courts. One is to make the statute apply only to causes of action arising after its passage. But as this construction leaves all action existing at the passage of the act, without any limitation at all (which, it is presumed, could not have been intended), another rule adopted is, to construe the statute as applying to such existing actions only as have already run out a portion of the statutory time, but which still have a reasonable time left for prosecution before the statutory time expires—which reasonable time is to be

A comparable result was reached by this Court in *United States* v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1. There, the Transportation Act of 1920, 41 Stat. 456, provided (270 U. S. at 2):

> All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action *accrues* and not after. [Italics supplied.]

Again, the Court rejected the argument that the statute had a retroactive effect and held instead that it had no application whatever to causes of action existing at the date of the Act (270 U. S. at 3):

> That a statute shall not be given retroactive effect unless such construction is required by explicit language or by necessary implication is a rule of general application. It has been applied by this Court to statutes governing procedure, *United States Fidelity and Guaranty Co.* v. *United States*, 209 U. S. 306; and specifically to the limitation of actions under another section of Transportation Act, 1920. *Fullerton-*

---

estimated by the court—leaving all other actions accruing prior to the statute unaffected by it. The latter rule does not seem to be founded on any better principle than the former. It still leaves a large class of actions entirely unprovided with any limitation whatever, or, as to them, is unconstitutional, and is a more arbitrary rule than the first. A third construction is that which was adopted by the court below in this case, and which we regard as much more sound than either of the others."

Krueger Lumber Co. v. Northern Pacific Ry. Co., 368 U. S. 836. There is nothing in the language of paragraph 3 of § 16, or in any other provision of the Act, or in its history, which requires us to hold that the three-year limitation applies, under any circumstances, to causes of action existing at the date of the Act.

Thus, the limitation provision in each of these cases was, for all purposes here pertinent, identical to Section 4 (c) of the 1948 Charter Act in that each statute contains the word "accrue" in the same context as Section 4 (c). This Court has uniformly held in each of these cases that, as to claims arising before the statute's enactment, the time for instituting suit was not to be computed from the claim's coming into existence, but rather, at the earliest, from the statute's effective date. In the *St. Louis Ry.* case, particularly, the Court specifically noted that there was nothing in the language of the limitations provision, which included "accrues," to overcome the presumption that the statute was not to operate retroactively. Plainly, therefore, the use of "accrued" in Section 4 (c) does not require, so far as the claim here involved is concerned, that the time for bringing suit is to be computed from February 1945, when the claim arose, rather than from June 1948, when the Charter Act went into effect. And since, apart from the word "accrued," there is nothing in Section 4 (c) which

would in any way support an inference that the limitation provision was intended to apply retroactively, it seems clear that, properly construed, Section 4 (c) is prospective only.

Our position—that the literal meaning of "accrued" is not conclusive as to the determination of when a period of limitations begins to run—is further supported by *Reading Co.* v. *Koons*, 271 U. S. 58. That case involved Section 6 of the Federal Employers' Liability Act (35 Stat. 66, as amended, 45 U. S. C. 56), which provides, substantially like Section 4 (c) of the 1948 Charter Act, that:

> * * * no action shall be maintained under this Act unless commenced within two years from the day the cause of action *accrued*. [Italics supplied.]

Prior to this Court's decision in that case, there had been a diversity of views among the state and lower federal courts as to when the time ran in cases where a personal representative was appointed subsequent to the employee's death. In resolving this confusion by holding that Section 6 required that the action be brought within two years of the injury and not of the appointment of the personal representative, the Court commented (271 U. S. at 61–2):

> This diversity of views [in lower courts] arises principally from the attempt made to find in the word "accrued" used in the statute, some definite technical meaning

> which will in itself enable courts to say at what point of time the cause of action has come into existence and consequently at what point of time the statute of limitations begins to run.
>
> * * * * * *
>
> We do not think it is possible to assign to the word "accrued" any definite technical meaning which by itself would enable us to say whether the statutory period begins to run at one time or the other; * * *"

2, The court below recognized that under newly imposed statutes of limitations the time normally starts from the statute's effective date as to pre-existing claims. However, it ruled that such a construction is appropriate only where rights of private individuals *inter sese* are involved for there, according to the court, "the strained construction was openly resorted to only for the purpose of preventing the statutes from summarily

---

*That "accrued" is not uniformly understood to have a retroactive connotation as to pre-existing causes of action is further evidenced by the fact that two of the district courts which have passed on the question here involved have read "accrued" in Section 4 (c) to mean "acquired." *United States* v. *H. Bowden*, N. D. Ga., No. 195, April 21, 1950, *infra*, pp. 37-38, *United States* v. *Rabinoff*, S. D. Calif., No. 12200-r, January 4, 1951, *infra*, pp. 38-39. Those courts reasoned that, since the 1948 Charter Act created the federally chartered corporation, there was no claim for or against that corporation prior thereto and that it was only upon the transfer of the rights and liabilities of the Delaware Corporation to its federally chartered successor that a right *accrued* to or against the latter.

cutting off existing rights, and for this reason being unconstitutional" (R. 35).[10] Since no problems of constitutionality would be presented by a retroactive application of Section 4 (c) here, where the Government is asserting a claim against a private individual, the court concluded that there was no reason to accord to the Government the benefits of a prospective interpretation of the statute.

While the court below correctly stated that there is no constitutional obstacle to Congress' cutting off at any time the Government's right to sue, its conclusion is a *non sequitur*. In the first place, the court completely overlooked the long established rule that since limitation provisions as applied to the Government are in derogation of the inherent rights of sovereignty, "[s]tatutes of limitation sought to be applied to bar rights of the Government, must receive a strict construction" (*DuPont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 462); "[s]tatutes of limitations against the United States are to be narrowly construed" so as to favor the Government. *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640, 650.

[10] At least as between private litigants, there is no question that a newly enacted statutory provision which has the effect of barring (or not allowing a reasonable time in which to assert) a claim would be unconstitutional. *Sturges* v. *Crowinshield*, 4 Wheat. 122, 207; *Edwards* v. *Kearzey*, 96 U. S. 595, 603; *Terry* v. *Anderson*, 95 U. S. 628; *Koshkonong* v. *Burton*, 104 U. S. 668; *Vance* v. *Vance*, 108 U. S. 514; *Wilson* v. *Iseminger*, 185 U. S. 55, 62; *Ochoa* v. *Hernandez*, 230 U. S. 139; *Carscadden* v. *Territory of Alaska*, 105 F. 2d 377 (C. A. 9).

See also, *McMahon* v. *United States*, 342 U. S. 25, 27; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 313–314; *United States* v. *Whited & Wheless*, 246 U. S. 552, 561; *Harp* v. *United States*, 173 F. 2d 761, 763–764 (C. A. 10), certiorari denied, 338 U. S. 816; cf. *United States* v. *Nashville, C. & St. L. Ry. Co.*, 118 U. S. 120, 125. Application of this rule of strict construction to Section 4 (c) fully supports a prospective construction of the statute as far as Government claims predating the enactment of Section 4 (c) are concerned.

Moreover, it is to be noted that Section 4 (c) in terms applies equally to suits "by or against the Corporation." As applied to claims against the Corporation, the retroactive construction adopted by the court below would at least be of doubtful constitutionality, if not clearly unconstitutional.[11] See cases cited fn. 10, p. 21. Since it is settled that statutes are to be construed to avoid doubts as to constitutionality (*American Communications Assn.* v. *Douds*, 339 U. S. 382, 407; *United States* v. *Congress of Industrial Organi-*

---

[11] Withdrawal by the Government of consent to suit without repudiation of the obligation, discussed in *Lynch* v. *United States*, 292 U. S. 571, 581, and in *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 119, is a matter entirely different from the imposition of a limitation provision, which, if construed to apply to preexisting claims against the Government, would have the effect of outlawing such claims so that they may no longer be regarded as governmental obligations.

sations, 335 U. S. 106, 120–121; *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407–408), it would seem, as the court below recognized (R. 35–36), that in a suit by a private individual against the Corporation, constitutional doubt would proscribe a retroactive construction.[11] In these circumstances, even assuming the premise of the court below that newly enacted statutes of limitations are read prospectively solely to avoid constitutional questions, Section 4 (c) should be construed prospectively as to claims both by and against the Corporation. There is nothing in the 1948 Charter Act to justify treating suits *by* the Corporation differently from those *against* the Corporation. Both are covered by the same phrase.

Finally, the premise of the court below that limitations statutes such as Section 4 (c) are construed prospectively solely to avoid constitutional doubts is erroneous. Wholly apart from constitutional restrictions, which are quite nar-

[11] The proviso in Section 16 of the 1948 Charter Act (15 U. S. C. (Supp. V) 714n), to the effect that "nothing in this Act shall limit or extend any period of limitation otherwise applicable to" claims enforceable against the Delaware Corporation (see fn. 18, *infra*, p. 35), does not eliminate the constitutional problem. The proviso, on its face, is operative only in situations where there would be an otherwise applicable period of limitations. A prospective construction of Section 4 (c) would still be required to avoid constitutional difficulties in regard to claims against the Corporation not included within the terms of the proviso.

row, the courts have consistently been reluctant to apply non-jurisdictional legislation retroactively. *Brewster* v. *Gage*, 280 U. S. 327; *United States* v. *Magnolia Co.*, 276 U. S. 160, 162–163; *Hassett* v. *Welch*, 303 U. S. 303; *Claridge Apartments Co.* v. *Commissioner*, 323 U. S. 141, 164; *Addison* v. *Holly Hill Fruit Products*, 322 U. S. 607; and cases cited, *supra*, p. 14. This reluctance stems basically from considerations of fairness and equity, *i. e.*, recognition of the often inequitable results of legislation which interferes with antecedent rights or which ascribes "a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed" (*Un. Pac. R. R. Co.* v. *Laramie Stock Yards*, 231 U. S. 190, 199). It was to give effect to these equitable considerations and not because of considerations of constitutionality that it has become a settled principle that a statute (not involving the jurisdiction of courts) "is not to be given retroactive effect unless such construction is required by explicit language or by necessary implication." *Bruner* v. *United States*, 343 U. S. 112, 117, n. 8. See also, *United States Fidelity Co.* v. *Struthers Wells Co.*, 209 U. S. 306, 314; *United States* v. *Heth*, 3 Cranch 399, 413; *Schwab* v. *Doyle*, 258 U. S. 529, 534; and cases cited *supra*, p. 14 and this page. As stated in *United States* v. *Heth*, *supra*, at 413:

> Words in a statute ought not to have a retrospective operation, unless they are so clear, strong and imperative, that no

other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. This rule ought especially to be adhered to, when such a construction will alter the pre-existing situation of parties, or will affect or interfere with their antecedent rights, services and remuneration; which is so obviously improper, that nothing ought to uphold and vindicate the interpretation, but the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.

And the same thought was expressed in *United States Fidelity Co. v. Struthers Wells Co., supra*, at 314:

> There are certain principles which have been adhered to with great strictness by the courts in relation to the construction of statutes as to whether they are or are not retroactive in their effect. The presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other. It ought not to receive such a construction unless the words used are so clear, strong and imperative that no other meaning can be annexed to them or unless the intention of the legislature cannot be otherwise satisfied.

The considerations of fairness and equity underlying the general rule apply with particular force to newly imposed statutes of limitations

for, apart from constitutional prohibitions, it obviously would be unfair to impose, for the first time, a limitations provision which has the effect of either barring suit completely or allowing insufficient time for instituting proceedings. The rule that newly imposed statutes of limitation normally apply only prospectively is therefore merely one aspect of the general principle applicable to the construction of all legislation, and as such is plainly not based on constitutional grounds alone. *Field Packing Co.* v. *United States*, 197 F. 2d 329 (C. A. 6);* *Un. Pac. R. R.* v. *Laramie Stock Yards*, 231 U. S. 190, 199; *Lewis* v. *Lewis*, 7 How. 776, 773; *United States* v. *St. Louis, S. F. & T. Ry. Co.*, 270 U. S. 1. In these circumstances, whatever the literal meaning of "accrued" as used in Section 4 (c) may be, it falls far short of the "clear, strong and imperative" language (*United States Fidelity Co.* v. *Struthers Wells Co.*, supra, at 314) required to depart from the normally prospective construction of statutes.

B. The legislative history reveals a Congressional intent that Section 4 (c) should be prospective only

Apart from the probability that Congress was aware of the settled judicial construction of

* It is patent from the cases cited by the Sixth Circuit in the *Field Packing* case that the Court of Appeals recognized that the general rule as to prospective operation of newly enacted statutes was fully applicable to new statutes of limitations. See 197 F. 2d at 330.

newly imposed statutes of limitations and acted accordingly (*Shapiro* v. *United States*, 335 U. S. 1, 16; *Morissette* v. *United States*, 342 U. S. 246, 261–263), the legislative history of Section 4 (c) expressly demonstrates that Congress expected it, along with the other provisions of the Charter Act, to be accorded the normal prospective construction in accordance with the usual rules.

1. As it was passed by both the House and Senate and sent to the Conference Committee, the bill which ultimately became the 1946 Charter Act contained a limitation provision applicable only to claims against the Corporation. The Conference Committee for the first time inserted a time limitation on claims by the Corporation by making the [illegible]-year limitation provision applicable to claims by, as well as against, the Corporation. This amendment by the Conference Committee was accepted without [illegible] by both the Senate and the House on June 19, 1946 (94 Cong. Rec. 6122, 6311). In the closing rush of Congressional business preceding its adjournment early in the morning of June 20,*

* The House passed the bill on June 18 (94 Cong. Rec. 6070). On the following day, June 19, the Senate received the House's version of the legislation and appointed conferees (94 Cong. Rec. 6121–6122). On the same day, June 19, the House also appointed conferees (94 Cong. Rec. 6070). The Conference Committee, after meeting and working out a compromise, submitted its compromise bill, together with a brief report (94 Cong. Rec. 6150–6151, 6309–6311), and both the House and Senate approved the bill still on June 19.

The report of the Conference Committee contained only a sketchy explanation of the new limitations provision (H. Rep. 2444, 80th Cong., 2d Sess., p. 6):

> The Senate bill provided that Commodity Credit Corporation should have the immunities of the United States from State statutes of limitations. The House amendment did not contain such a provision. Under the conference substitute a 4-year statute of limitations will apply to suits brought by or against the Corporation.[28]

However, Senator Aiken, who was a member of the responsible Senate Committee, the chairman of the Subcommittee charged with the bill, the manager of the bill on the Senate floor, and the senior Senate conferee, submitted, with unanimous consent, a fuller analysis of the bill reported by the Conference Committee. In his explanation Senator Aiken stated as to Section 4 (c) (94 Cong. Rec. A-4618, A-4619):

> Another change made by the conference committee was to make the proposed 4-year statute of limitations applicable not only to claims against the Corporation but also to claims by the Corporation. The committee felt that the statute of limitations should be applicable to claims by the Corporation as well as to claims against the Corporation. As provided by section

[28] The conference report consisted in most part of the bill which the Conference Committee had worked out.

16, the proposed 4-year statute of limitations will not limit or extend any period of limitation otherwise applicable to claims against the Delaware Corporation. *With respect to claims by the Corporation, the 4-year period of limitations will not begin to run on claims of the Delaware Corporation transferred to the Federal Corporation until June 30, 1948, the effective date of the new charter.* [Italics supplied.]

This statement, which demonstrates beyond any doubt that Section 4 (c) was intended to be operative only from the effective date of the 1948 Charter Act, is entitled to great, if not conclusive, weight, for it was made by the member of Congress who by virtue of his responsibilities in the matter was probably the most familiar with the purpose and intent of the Act. Compare *United States* v. *City and County of San Francisco*, 310 U. S. 16, 30–36; *Humphrey's Executor* v. *United States*, 295 U. S. 602, 628; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 650; *McLean* v. *United States*, 226 U. S. 374, 380; *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.* v. *Acme Fast Freight, Inc.*, 336 U. S. 465, 471–476; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479–480.

In addition to Senator Aiken's statement, it is significant that, while the limitation provisions contained in the earlier bills applied solely to

[redacted]

And when S. 1323, as passed by the Senate, came before the House, the latter, on the motion of Representative Wolcott, struck out everything after the enacting clause in S. 1323 and substituted as an amendment the provisions of H. R.

2990, which the House Agriculture Committee had considered and reported favorably with amendments. H. Rep. No. 1790, 80th Cong., 2d Sess. The House substitute bill recommended a four-year period of limitations on claims against the Corporation but provided no limitation on claims by the Corporation.* 94 Cong. Rec. 9666. The statement in the House Committee's report to the effect that "[t]he 4-year limitation upon the right to bring suit against the Corporation represents a length of time believed fair to both the plaintiff and the Corporation" (H. Rep. No. 1790, 80th Cong., 2d Sess., p. 10) again indicates that the Committee intended the plaintiff to have the full four years within which to institute suit—an intention which would be fully effectuated as to pre-enactment claims only if the limitations period is completely prospective.

The responsible committees of both the Senate and House obviously regarded the time limit provided on suits against the Corporation as prospective only and fixed the time for instituting such actions on the basis of what each regarded as "fair to both the plaintiff and the Corporation." This strongly suggests that, in ultimately imposing a limitation on suits by the Corporation, Congress recognized that fairness to the Corporation and the defendant likewise required that the

*The House bill omitted the provision as to exemption of claims by the corporation from state statute of limitations which the Senate had included as a precautionary measure.

Corporation should have at least the full period for instituting suit. In addition, not only is there nothing in the legislative history even suggesting that Congress intended to impose a more restrictive limitation upon the institution of suits by the Corporation than upon actions against it, but it is significant that, prior to the imposition of the limitation on actions by the Corporation, at least the Senate bill went out of its way to make clear that such actions were not to be subject to any time limitations. In the light of these considerations, it seems clear that when Congress finally subjected claims by the Corporation to a statute of limitations, it intended that the limitation should not apply retroactively to preexisting claims by the Corporation, and should not cut them off summarily or allow an unreasonably short time for instituting suit.

2. The court below declined to give any effect to this legislative history of Section 4 (c) "in view of the clear language of the section under consideration" (R. 36). This refusal was erroneous, since as we have shown, *supra*, pp. 12–26, the word "accrued" does not have the clear meaning ascribed to it by the court in regard to claims arising prior to the imposition of the time limitation.

Moreover, even if "accrued," as applied in such a situation, clearly meant what the court below said it did, it does not follow that the court nevertheless should not have given to the legis-

lative history its appropriate weight as an aid to statutory construction. This Court has not enunciated any rule, consistently adhered to, which forbids reference to legislative history where the statutory language appears to be clear. The decisions in which this Court has looked to legislative history as a guide to statutory construction are legion. They involve all kinds of cases and types of statutes. See, *e. g.*, *Church of the Holy Trinity* v. *United States*, 143 U. S. 457, 472; *Queen* v. *United States*, 260 U. S. 178, 194; *Armstrong Co.* v. *Nu-Enamel Corp.*, 305 U. S. 315, 333; *United States* v. *American Trucking Assns.*, 310 U. S. 534, 542–4; *United States* v. *Dickerson*, 310 U. S. 554, 562; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479; *Walling* v. *Portland Terminal Co.*, 330 U. S. 148; *Cabell* v. *Markham*, 148 F. 2d 737, 739 (C. A. 2), and cases there cited, affirmed, 326 U. S. 404, 409; *Chicago & Southern Air Lines, Inc.* v. *Waterman SS Corp.*, 333 U. S. 103, 108; *Schwegmann Bros.* v. *Calvert Distilling Corp.*, 341 U. S. 384, 390–395, 399; *Johansen* v. *United States*, 343 U. S. 427, 432; *United States* v. *Public Utilities Commission*, 345 U. S. 295, 315–316; see also cases cited in *Commissioner* v. *Estate of Church*, 335 U. S. 632, 667–9 (Appendix to opinion of Frankfurter, J., dissenting).

Such resort to legislative history is proper even where the statutory language appears to be clear, for the ultimate objective in construing a statute is to effectuate the policy of Congress, and

since "words are inexact tools at best * * *" there is wisely no rule of law forbidding resort to explanatory legislative history no matter how "clear the words may appear on "superficial examination"." *United States* v. *American Trucking Assns.*, [*supra*]. See also *United States* v. *Dickerson*, [*supra*]." *Harrison* v. *Northern Trust Co.*, *supra*, at p. 479. And where adherence to literal language would create incongruities and produce results "plainly at variance with the policy of the legislation as a whole" (*Ozawa* v. *United States*, 260 U. S. 178, 194), that result, this Court has frequently held, justifies following "that purpose, rather than the literal words" (*United States* v. *American Trucking Assns.*, 310 U. S. 534, 543). See, also *Lawson* v. *Suwannee SS Co.*, 336 U. S. 198, 201, 206; *United States* v. *Public Utilities Commission*, 345 U. S. 295, 315–316; *United States* v. *Rosenblum Truck Lines*, 315 U. S. 50, 55; *United States* v. *Dickerson*, 310 U. S. 554, 562.

These principles are fully applicable here, for, as has been shown, *supra*, pp. 26–32, the legislative history clearly reveals a Congressional intent that Section 4 (c) should be prospective only. Moreover, the construction below reaches the incongruous result that Section 4 (c) is retroactive in regard to claims *by* the Corporation at the same time that it is prospective only as to claims

against the Corporation." Not only is there no justification in the Act or its legislative history for such a distinction, but it attributes to Congress, which is vitally concerned with the fiscal position of the Government, the anomalous intention of allowing a far longer period to enforce claims against the Corporation than that given the Corporation to enforce its claims against private persons. In these circumstances, even if the literal meaning of "accrued" were as clear as the court below held it to be, it must give way to the plain purpose and policy of Section 4 (c)."

"The court below recognized the incongruity of its position, but indicated that "we do not think it would be too embarrassing to give the statutory language one meaning in the situation before us, and another in the converse situation of a suit against Commodity * * *" (R. 36).

"That Congress did not intend by Section 4 (c) to bar or unreasonably curtail the time for instituting action on claims predating the statute is further evident from Section 16 of the Charter Act (15 U. S. C. (Supp. V) 714n) which provides:

"* * *The enforceable claims of or against Commodity Credit Corporation, a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation: *Provided*, That nothing in this Act shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation."

This care not to curtail time limitations otherwise applicable shows, we believe, Congress's general purpose to provide a reasonable time to institute suit on preexisting claims. This legislative intention should apply to claims by the Corporation as well as those against it. For we have shown

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed and the cause remanded for further proceedings."

ROBERT L. STERN,
Acting Solicitor General.
WARREN E. BURGER,
Assistant Attorney General.
PAUL A. SWEENEY,
MELVIN RICHTER,
JOHN G. LAUGHLIN,
Attorneys.

NOVEMBER 1953.

---

supra, pp. 22–23, 34–35, that Section 4 (c) in terms applies equally to claims "by or against the Corporation" and there is nothing in the Act's legislative history to suggest that Congress intended to impose a more restrictive limitation on claims by the Corporation than on those against the Corporation. It was unnecessary to insert a proviso, similar to that in Section 16, with respect to claims by the Corporation, since there was no federal statute applicable and state limitation provisions could not bar suits by the United States (see, *e. g.*, *United States* v. *Summerlin*, 310 U. S. 414, 416). See fn. 7, *supra*, p. 11.

* Respondents' brief in opposition (pp. 6–7) urges that the judgment below is supportable, apart from the construction of Section 4 (c), on the ground that the Government's complaint failed to state a cause of action. Both the District Court and the court below, however, based their judgments solely on the construction of Section 4 (c); neither court reached or passed upon the sufficiency of the complaint. In these circumstances, we believe that this Court should not pass upon this additional contention at this time but instead should leave it open for consideration by the lower courts upon remand.

APPENDIX

In the United States District Court for the Northern District of Georgia

Civil Action No. 195

UNITED STATES OF AMERICA

v.

H. BOWDEN

ORDER DENYING MOTION TO DISMISS

In his plea and answer and the amendment thereto, the defendant contends that this suit is barred by state and Federal Statutes of Limitations.

State Statutes of Limitation are inapplicable where the Federal Statute prescribes a limitation of time within which the action must be brought. Therefore, I find it unnecessary to consider the effect of the pertinent Statute of Limitations of the State of Georgia.

Section 4c of the Commodity Credit Corporation Charter Act as amended June 7, 1949, provides in part as follows: "No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought."

Prior to this enactment, there was no limitation within which the United States or its agency, the original Commodity Credit Corporation (a

Delaware corporation) might take action on this claim. When that corporation was dissolved and its assets transferred to the new Commodity Credit Corporation (a Federal corporation) as at midnight, June 30, 1948, the above quoted section then containing a four-year period of limitation became operative as to this claim. By the amendment of June 7, 1949, the period of limitation was extended to six years. It is seen that the Federal corporation thus acquired the claim on July 1, 1948 and brought this suit on January 6, 1950, well within the statutory limitation.

The Motion to Dismiss contained in Count One of the plea and answer filed February 11, 1950, and Count One (A) of the amended plea and answer filed on March 6, 1950 are each denied.

This April 21, 1950.

M. NEIL ANDREWS,
United States District Judge.

In the United States District Court, Southern District of California, Central Division

Honorable LEON R. YANKWICH, *Judge*

No. 12290-Y

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATE E. RABINOFF, HARRY FAUST, AND GLENS FALLS INDEMNITY COMPANY, A CORPORATION, DEFENDANTS

DECISION ON MOTIONS

The motions of the defendants Nate E. Rabinoff, Harry Faust and Glens Falls Indemnity

Company, a corporation, to dismiss the complaint in the above-entitled cause, heretofore argued and submitted, are now decided as follows:

I am of the view that the right of action of the plaintiff did not accrue until it acquired the rights transferred to it by the Commodity Credit Corporation of Delaware on the 30th day of June, 1948. Before that time, it had no enforceable claim against any of the defendants. Under Section 714 (b) of Title 15 U. S. C. A., as amended, the plaintiff had six years after the right accrued to bring suit. The present action, instituted on September 18, 1950, was well within that period.

The motions to dismiss and each of them will, therefore, be and are hereby denied.

Dated this 4th day of January, 1951.

LEON R. YANKWICH,
Judge.

U. S. GOVERNMENT PRINTING OFFICE: 1952